

Federal Reserve System

§ 263.85

pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.85 of this subpart by a certain date;

(2) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(3) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(4) Take any combination of the above actions.

(g) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

[56 FR 38052, Aug. 9, 1991, as amended at 76 FR 56604, Sept. 13, 2011]

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United States district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order. Whenever a savings and loan holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, pursuant to section 10(g)(4) of HOLA (12 U.S.C. 1567a(g)(4)).

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order. The Board, pursuant to section 10(i) (12 U.S.C. 1467a(i)), may also assess civil money penalties for violation of the directive against any savings and loan holding company and any institution-affiliated party of the savings and loan holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease-and-desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank, bank holding company, or savings and loan holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank, bank holding company, or savings and loan holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

[56 FR 38052, Aug. 9, 1991, as amended at 76 FR 56604, Sept. 13, 2011]

§ 263.85 Establishment of increased capital level for specific institutions.

(a) *Establishment of capital levels for specific institutions.* The Board may establish a capital level higher than the